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Mary Cottrell, Secretary
Department of Telecommunications and Energy
One South Station, 2nd Floor
Boston, MA 02110

Re: D.T.E. 03-24 Rulemaking by the Department of Telecommunications and Energy, pursuant to 220 C.M.R. §§2.00 et. seq. to promulgate regulations to establish a funding mechanism for wireline Enhanced 911 services, relay services for TDD/TTY users, communications equipment distribution for people with disabilities, and amplified handsets at pay telephones, as 220 C.M.R. §§ et. seq.

Dear Ms. Cottrell:

Please accept this letter in lieu of comments in the above captioned proceeding on behalf of AT&T Communications of New England, Inc. ("AT&T"), pursuant to *NOTICE OF PUBLIC HEARING AND REQUEST FOR COMMENTS* ("Notice"), issued March 13, 2003, and *ORDER INSTITUTING RULEMAKING* ("Order"), issued March 13, 2003.

This rulemaking arises out of the Acts of 2002, c. 239 et. seq., ("Legislation") and is intended to establish a funding mechanism for Enhanced 911 service ("E-911"), relay services for users of telecommunications device for the deaf ("TDD/TTY"), communications equipment distribution program for people with certain disabilities ("adaptive equipment"), and amplified handsets at Massachusetts pay telephones.¹ Specifically, in the proposed rules ("Proposed Rules") the Department of Telecommunications and Energy ("Department") has established a surcharge ("Surcharge"), which would be collected from telecommunications consumers as a means to ensure the continued provision of these services.

Deficit Determination

The Department noted that a significant component of its obligations under the Legislation is the determination of the portion of directory assistance revenue (“DA Revenue”) that is to be used to offset the “deficit incurred by telephone companies prior to the effective date of the Act.”² It is imperative that any final rules in this proceeding include substantial protections to ensure that both the calculation and applications of the surcharge adequately protect Massachusetts ratepayers. AT&T notes that Verizon estimates that the Fund’s deficit was \$40 million at the end of 2002.³ Clearly this claim is substantial and requires further inquiry.

There is no information provided in the *Order* relative to whether the deficit figure alleged by Verizon has been verified to the Department through prepared financial records. Such verification of Verizon’s stated deficit amount should be a required threshold determination in the Proposed Rules, prior to the disbursement of any Surcharge proceeds to Verizon. In order to determine the precise deficit amount, the Department should require that an independent audit be performed. Such an audit would be the only way to ensure that the deficit amount reflects actual and prudent costs in managing the E-911 system. Given that Verizon will be the ultimate beneficiary of the Surcharge proceeds, as pertains to the disbursements paid towards the deficit, and as Verizon has alleged the \$40 million deficit figure, it is only reasonable that it pay for the audit to be performed.

Verizon has historically received revenue from sources other than directory assistance, which the Department should ensure is considered in the ultimate deficit determination. For example, many competitive local exchange carriers (“CLECs”) are required, pursuant to the terms of their interconnection agreements, to compensate Verizon for E-911 expenses. (Indeed, many carriers may have satisfied their statutory obligation to contribute towards the funding of the E-911 system – or gone beyond it – through payments made to Verizon pursuant

¹ *ORDER*, at 1-4.

² *Id.*, at 2.

³ *Id.*

to their interconnection agreements.) In addition, other funds may also have been available to cover E-911 related costs, which should be considered in the final determination of the deficit.⁴ These payments should be attributed towards the deficit, to ensure that the deficit accurately reflects all revenues that have been paid in mitigation of the E-911 management costs.

Line Item Surcharge

Given the development of competition in the telecommunications marketplace in Massachusetts, consumers have a heightened sensitivity to surcharges. In general, AT&T receives numerous complaints from consumers arising out of the many fees, taxes and surcharges on their respective bills. Accordingly, providing as much description as possible with respect of the nature of the Surcharge would certainly alleviate some level of customer confusion. According to 16.03(2) of the Proposed Rules, the line item on customers' bills for the Surcharge would state "911/Disability Access Fee." Some consumers may confuse this description as a fee that would be paid and retained by the telecommunications companies, as opposed to a fee paid to the Statewide Emergency Telecommunications Board (SETB) for purposes of providing and administering a social good. Accordingly, AT&T suggests that customer bills denote the Surcharge as the "MA 911/Disability Access Fee."

TDD/TTY Equipment

Pursuant to M.G.L. c. 166, §15E(b), common carriers are required to provide a TDD equipment distribution service and a specialized customer-premises equipment ("SCPE") distribution service. Additionally, common carriers are required to provide TDD and SCPE equipment to requesting subscribers free of charge, or at a discounted rate⁵ if the requesting subscriber is unable to afford the equipment at full cost.⁶ What is unclear, however, is how the

⁴ See, e.g., M.G.L. c. 6A, §F.

⁵ The discounted rate must be approved by the Department in an established rate schedule. M.G.L. c. 166 §15E(b).

⁶ *Id.*

Surcharge funds will be distributed in light of this obligation. In the *Order*, the Department states that “[t]he surcharge will pay for prudently-incurred costs associated with provisioning... dual party TDD/TTY relay service, [and] adaptive equipment distribution.”⁷ Moreover, the Proposed Rules would establish that the “SETB will make payments to providers of...TDD/TTY relay service, and adaptive equipment...for prudently incurred costs[.]”⁸

While it appears that the Department intends a portion of the Surcharge proceeds to be used to compensate carriers for costs incurred in compliance with the M.G.L. c. 166 §15E(b) requirements, the Department should clarify this fact in the final rules. In fact, it is unclear whether the ‘prudently incurred costs’ set forth in Proposed Rule 16.04(3) would include all costs justifiably related to compliance with M.G.L. c. 166 §15E(b), or some additional costs that remain currently undefined under the Proposed Rules.

Please feel free to contact me with any questions you may have in this or any other regard.

Yours truly,

Jeffrey Fialky

⁷ *Order*, at 3.

⁸ Proposed Rules, 16.04(3).